IN THE HIGH COURT OF JUDICATURE AT BOMBY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 81 OF 1997

Jagannath Jayram Chormale,)
aged about 36 years, Occ: Service,)
residing at Bhdhwar Peth, Phaltan,)
Taluka Phaltan, District : Satara) ...Applicant

V/s

1. State of Maharashtra)
)
2. Smt. Rekha Aba Londhe, aged)
about 31 years, Household wife)
)
3. Master Yogesh Aba Londhe, aged)
about 11 years, Occ. Student.)
)
4. Miss Yogita Aba Londhe aged)
about 8 years,)
No.3 and 4 minors through their)
natural guardian mother viz the)
Respondent No.2 abovenamed.)
No.2 to 4 residing at Wathar Station,)
Taluka Koregaon, District Satara) ....Respondents.

Mr. P.J. Shinde for the Applicant.

Mr. U.V. Nikam, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 10th November, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This Criminal Revision Application is directed against the judgment and order passed by the Sessions Court, Satara whereby the Sessions Court confirmed the judgment and order passed by the Judicial Magistrate, First Class, Koregaon and convicted the applicant for an offence punishable under section 304-A of the Indian Penal Code and sentenced him to suffer simple imprisonment till rising of the Court and also directed that he should pay fine of Rs 2000/- and, in default, to further suffer simple imprisonment for two months. He is also convicted for an offence punishable under section 187 of the Motor Vehicles Act and sentenced to suffer simple imprisonment till rising of the Court and to pay fine of Rs 2000/- and, in default, to suffer further simple imprisonment for one month.

3. The prosecution case, in brief, is that the applicant was driving a tanker on 01/06/1991 at about 9.30 p.m. and witnesses Suresh Dodake (P.W.2) and Mohan Ghongade (P.W.4) were sitting in the said tanker. The prosecution story is that the accused drove the said tanker on the body of one

Aba Londhe lying on the road. The prosecution case is that two witnesses saw body of Aba Londhe lying on the road in the light of S.T. Bus which was coming in the opposite direction. After the applicant drove his vehicle on the body of Aba Londhe, he stopped his vehicle at a distance and asked these witnesses to go and check the condition of the person lying on the road. However, both the witnesses were afraid to go back and they did not report this fact to the Police Station. The prosecution case is that even the applicant did not report this incident to the police. The statements of witnesses viz. Suresh Dodake (P.W.2) and Mohan Ghongade (P.W.4) were recorded by the Police after four days. The Police filed charge-sheet and the prosecution relied on the evidence of these two eye witnesses and also statement of the father of the deceased, watchman of High School Devram Kalokhe (P.W.3), Rashid Mulla (P.W.5) and Investigating Officer Pandurang Patil (P.W.6). Both the Courts below relied on the statements of the two eye witnesses and came to the conclusion that the applicant was driving the vehicle in a rash and negligent manner and that he could have saved the life of the deceased Aba Londhe if

he had driven the tanker properly.

4. The case of the applicant was that he was not driving the vehicle and that the vehicle was being driven by Rashid Mulla (P.W.5). The learned Counsel for the applicant submitted that the evidence was also brought on record to show that the wife of the deceased had filed a claim in the Motor Accident Tribunal against Rashid Mulla and one another. The learned counsel submitted that the witnesses were influenced by Rashid Mulla to state that the applicant was driving the vehicle. He submitted that the evidence on record is insufficient to come to the conclusion that the applicant was driving the vehicle in a rash and negligent manner. He submitted that even if it is held that the applicant was driving the vehicle, it is not brought on record that he did not have proper driving licence. He further submitted that the finding has been recorded by the lower Appellate Court that the deceased was lying in a drunken state on the road. He submitted that it was the bounden duty of the lower Appellate Court to consider that, in such circumstances, whether it can be held that the applicant was

guilty of a rash and negligent driving. He also invited my attention to the spot panchanama which discloses that the distance between the gate of the School and the foot-path was 30 ft. and, thereafter, a kachcha road begins and the dead body was lying at a distance of 7 ft. from the kachcha road and that the width of the tar road was 18 ft.. He submitted that this aspect had not been considered by both the Courts below. He submitted that, therefore, there was a complete non-application of mind on the part of both the Courts below on the question of rashness and negligence on the part of the applicant and that the finding was given more on conjectures and surmises and that, even otherwise, the statements of eye witnesses which were recorded after a lapse of 4 days were unreliable. He submitted that, therefore, since the finding was recorded on extraneous material, judgments and orders of both the Courts below were liable to be set aside and that the Revisional Court, exercising its jurisdiction under section 401 of the Criminal Procedure Code, can set aside the Judgment and order of the lower Appellate Court after it has noticed that the judgment and order passed by the lower Court was illegal.

5. The learned APP appearing on behalf of the State vehemently opposed the submissions made by the learned Counsel for the applicant. He submitted that it was established by two eye witnesses that the applicant was responsible for death of the deceased and that he has run over his tanker on a person who was lying on a kachcha road. He submitted that that the arguments could have been advanced about the driver not being rash and negligent if the person was lying on a tar road. He submitted that it was easily possible for the applicant to have avoided running over his tanker on a helpless person lying on the street. He submitted that evidence of two eye witnesses was clinching and, on the basis of that evidence, findings were recorded by the trial court and the lower Appellate Court and there was no reason for this Court to set aside the said findings.

6. In my view, the evidence on record is insufficient to come to a conclusion that the applicant was driving a tanker in a rash and negligent manner and that the applicant is entitled to get a benefit of doubt. The lower Appellate Court

has given a categorical finding that the deceased Aba Londhe was lying in a drunken condition on the road at the time of the incident. The lower Appellate Court, however, came to the conclusion that the conduct of deceased Aba Londhe did not absolve the accused from his responsibility to drive a tanker cautiously and carefully. The lower Appellate Court has further come to the conclusion that it was the duty of the driver to stop the tanker or to drive it in a manner so that the deceased would not suffer any injury. In my view, the said finding will have to be set aside. The Trial Court, in my view, has erred in coming to the conclusion that the applicant drove the vehicle in a rash and negligent manner. In order to establish the negligence and the rashness on the part of the accused, it is the duty of the prosecution to establish by oral and documentary evidence that the driver was driving his vehicle in a rash and negligent manner. In the present case, there is no evidence to show that the applicant was driving at a speed. Both the eye witnesses have merely stated that they saw the deceased lying on the road in the head-lights of the S.T. Bus coming from the opposite direction. These witnesses do not state that the

vehicle was being driven in a speed. It must be remembered that the accident took place at 9.30 p.m at night. There is no evidence to suggest that there was any lamppost or light on the road. The spot panchanama clearly shows that the body was found at a distance of 7 ft. from the kachcha road and that there was open space of about 30 ft. from the gate of the School till the end of the foot-path. It is understandable that if the deceased was lying on this strip of land and that the tanker had been driven on a person lying on this portion of the land then a finding could have been that the driver was driving the vehicle in a rash and negligent manner. A person lying on the road merely 7 ft. from the foot-path in a drunken condition where there was no lights, might not have been noticed by a driver particularly when a vehicle like S.T. Bus was coming from the opposite direction on a small road where width of the tar road is only 18 ft. In my view, therefore, the conviction awarded by the Trial Court and confirmed by the Sessions Court is liable to be set aside and the applicant herein is liable to be acquitted of the offence with which he was charged.

7. In the result, the Criminal Revision Application is allowed. The judgment and order dated 13/05/1994 passed by the Judicial Magistrate, First Class in S.C.C. No. 490 of 1991 is quashed and set aside. The judgment and order passed by the lower Appellate Court dated 11/03/1997 passed in Criminal Appeal No.64 of 1994 is quashed and set aside and the applicant-accused is acquitted. However, it is clarified that the amount which has been paid to the widow of the deceased shall not be refunded to the applicant and the applicant shall not claim the amount of fine deposited by him. It is further clarified that the acquittal of the applicant-accused shall not come in the way of the widow of the deceased who has claimed compensation and the said application may be pursued by the widow and the Tribunal may not be influenced by the acquittal of the applicant-accused since a benefit of doubt has been given to him.

8. Criminal Revision Application is made absolute in the above terms.

V.M. KANADE, J.